TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~360.~~ ~~477~~ 574

THE NEW ORLEANS AND BAYOU SARA MAIL COMPANY, APPELLANTS,

vs.

ANTHONY FERNANDEZ AND BENJAMIN F. FLANDERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED DECEMBER 7, 1866.

SUPREME COURT OF THE UNITED STATES.

No. 360.

THE NEW ORLEANS AND BAYOU SARA MAIL COMPANY, APPELLANTS,

vs.

ANTHONY FERNANDEZ AND BENJAMIN F. FLANDERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Petition.—Filed January* 9, 1866.

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

THE NEW ORLEANS AND BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJ. F. FLANDERS. } No. 3,709.

Petition and order thereon.—Filed January 9th, 1866.

To the hon. the circuit court of the United States, sixth circuit, eastern district of Louisiana:

The petition of the New Orleans and Bayou Sara Mail Company, a company incorporated under the laws of the State, and herein acting through J. G. Landry, J. S. Relf, and J. C. La None, respectfully represent that said company is the true and lawful owner of two certain steamboats navigating the tide water of the United States
2 in the State of Louisiana, named the Laurel Hill and Iberville, and which said boats are now within the admiralty jurisdiction of this hon. court.

Further your petitioner avers that one Anthony Fernandez, a licensed auctioneer of the State of Louisiana for the parish of Orleans, has advertised the same for sale by public auction, to be held on Tuesday, the 9th day of January, 1866. Further they aver, that the said Anthony Fernandez is pretending to act herein under the authority of Benj. F. Flanders, supervising special agent of the Treasury Department for the district in which Louisiana is situate, who has ordered said boats to be sold, as will appear by reference to the printed advertisement published in the New Orleans Times, a journal published in the city of New Orleans, a copy of which is hereunto annexed for reference.

3 Now your petitioners aver that the said Anthony Fernandez has no right to sell, and that Benjamin F. Flanders has no right to order the sale of said boats, they, the said boats, being, as in above stated, the property of your petitioners. Further they say that neither the said Fernandez nor the said Flanders individually, or as special agent of the Treasury Department of the United States, have any right, interest, or claim whatsoever in, or to, or upon said steamboats, and that a sale of them would be a violation of the rights of your petitioners, and that they should be restrained from their intended wrong-doing by your honors.

The premises and the annexed bond and affidavit considered, your petitioner judges that a writ of injunction may issue from your hon. court, directed to Anthony Fernandez and Benjamin F. Flanders,
4 enjoining them and prohibiting them from proceeding any further in their proposed sale of said steamboats Laurel Hill and Iberville; and that a writ of sequestration issue, directed to the marshal of this hon. court, commanding him to take into his possession, and there to keep until further order of your honors the said steamboats; that said Anthony Fernandez and Benjamin F. Flanders may

be cited to appear and answer this petition, and that after due proceedings are had, your petitioners be declared to be the true and lawful owners of said steamboats, the Laurel Hill and Iberville; that the injunction herein granted may be made perpetual, and that said boats be delivered over to your petitioners as their property. Further petitioners pray for all general and equitable relief.

(Signed) T. H. MORGAN,
Att'y for Pl'ffs.

5 *Affidavit.*

J. S. Relf, being duly sworn, says that the allegation contained in the foregoing petition are true; that he is one of the liquidators of the New Orleans and Bayou Sara Mail Company; that both J. G. Landry and J. C. La None, the other liquidators, are absent, and the boats described in this petition are the exclusive property of the said New Orleans and Bayou Sara Mail Company.

(Signed) J. S. RELF,
Liquidative Commis. of the N. O. & B. S. Mail Co.

Sworn to and subscribed before me, the 8th day of Jan., A. D. 1866.

(Signed) F. B. VINOT, *D'y Cl'k.*

Order.

Let a writ of injunction and a writ of sequestration issue as prayed for, the pl'ffs giving bond in the sum of $10,000, with good and solvent security, conditioned as law directs.

In chambers.

(Signed) E. H. DURELL, *Judge.*

6 *Bond for injunction and sequestration.—Filed January 9th*, 1866.

Know all men by these presents, that we, the New Orleans and Bayou Sara Mail Company, through J. S. Relf, liquidating commissioner of said company, as principal, and J. Morgan Hall and John C. Baker, as securities, are held and firmly bound, jointly and severally, unto Anthony Fernandez and Benjamin F. Flanders in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 9th day of January, in the year of our Lord eighteen hundred and sixty-six

Whereas the New Orleans and Bayou Sara Mail Company have presented a petition to the honorable circuit court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying, among other things, for a writ of injunction and a writ of sequestration against Anthony Fernandez and

Now the condition of the above obligation is, that we, the above bounden the New Orleans and Bayou Sara Mail Company, and J. Morgan Hall and John C. Baker, will well and truly pay to the said Anthony Fernandez and Benjamin F. Flanders, the defendant in said injunction and sequestration, all such damages as they may recover against us in case it should be decided that the said process was wrongfully obtained.

(Signed)	J. S. RELF.	[SEAL.]
(Signed)	J. MORGAN HALL.	[SEAL.]
(Signed)	JNO. C. BAKER.	[SEAL.]

Signed, sealed and delivered in the presence of—
(Signed) F. B. VINOT.

7 *Injunctions.*

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

UNITED STATES OF AMERICA:

THE NEW ORLEANS AND BAYOU SARA Mail Company *vs.* ANTHONY FERNANDEZ and BENJ. F. Flanders. } No. 3,709.

The President of the United States to Anthony Fernandez and Benj. F. Flanders, greeting:

Whereas it has been represented to us in our said court on the part of the New Orleans and Bayou Sara Mail Company, by their petition lately exhibited against you and Benjamin F. Flanders,
8 touching and concerning certain matters and things in said petition contained, now, therefore, in consideration of the premises and of the allegations in said petition contained, you, Anthony Fernandez and Benjamin F. Flanders, your agents and attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from proceeding any further in the proposed sale of the steamboats Laurel Hill and Iberville, until the further order of our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 9th day of January, 1866.

(Signed) F. B. VINOT, [SEAL.]
D'y Cl'k.

Marshal's return.

9 Received January 9th, 1866, and same day, month, and year served a copy of the within writ on the two defendants, An-

thony Fernandez and B. F. Flanders, named herein, each personally said Fernandez by D'y Hollander, and said Flanders by D'y Egan.

New Orleans, January 9, 1866.

(Signed) G. HOLLANDER,
D'y U. S. Marshal.

(Signed) M. EGAN,
D'y U. S. Marshal.

Writ of sequestration.—Issued the 9th January, 1866.

Circuit Court of the United States, sixth circuit and eastern district of Louisiana.

UNITED STATES OF AMERICA:

THE BAYOU SARA MAIL COMPANY
vs.
ANTHONY FERNANDEZ and BENJ. F. Flanders. } No. 3,709.

10 The President of the United States to the marshal of the United States for the eastern district of Louisiana, greeting:

You are hereby commanded to sequester and take into your possession according to law the following described property, to wit: the steamboats named the Laurell Hill and Iberville, which said boats are now within the admiralty jurisdiction of this hon. court, and hold the same until further order of our said court. And what you may do in the premises make due return thereof to our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 9th day of January, 1866.

(Signed) F. B. VINOT, *D'y Cl'k.* [SEAL.]

Marshal's return.

Received January 9th, 1866, and, in obedience to this writ, seized and took into the U. S. marshal's possession the steamboat
11 Laurel Hill and the steamboat Iberville, which boats are held subject to the decision of the hon. circuit court. Executed this 9th January, 1866.

New Orleans, January 9th, 1866.

(Signed) G. HOLLANDER,
D'y U. S. Marshal.

Citation to Benj. F. Flanders.

THE NEW ORLEANS AND BAYOU SARA MAIL Company
vs.
ANTHONY FERNANDEZ & BENJAMIN F. FLANDERS. } No. 3,709.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Benjamin F. Flanders to

comply with the demand of the New Orleans and Bayou Sara Mail Company, a company incorporated under the laws of the State of Louisiana, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of February, 1866.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 9th day of January, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

12 *Marshal's return.*

Received January 9th, 1866, and on the 10th day of same month and year served a copy of the within citation and plaintiff's petition annexed on Benj. F. Flanders, the defendant named herein, personally, at his office, corner of Crossman and Front Levee street, in this city.

N. Orleans, January 10th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

THE NEW ORLEANS AND BAYOU SARA MAIL Company
vs.
ANTHONY FERNANDEZ & BENJAMIN F. FLANDERS. } No. 3,709.

13 The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Anthony Fernandez to comply with the demand of the New Orleans and Bayou Sara Mail Company, a company incorporated under the laws of the State of Louisiana, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of February, 1866.

Witness the honorable Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States of America, at the city of New Orleans, this 9th day of January, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

14 *Marshal's return.*

Received January 9th, 1866, and on the 10th day of same month and year served a copy of the within citation and plaintiff's petition annexed on Anthony Fernandez, the defendant named herein, personally, at his office, 37 Exchange Place, in this city.

New Orleans, January 10th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Answer and plea to the jurisdiction.—Filed January 11th, 1866.

BAYOU SARA MAIL COMPANY *vs.* ANTHONY FERNANDEZ & BENJAMIN F. FLANDERS. } Ans. and plea to jurisdiction.

To the honorable the circuit court of the United States for the 6th circuit and eastern district of Louisiana:

The defendant, Benjamin F. Flanders, herein represented by Jno. K. Goodloe, U. S. atto. for the eas. dis. of Louisiana, says that
15 it is true that he has ordered and advertised the steamers Laurel Hill and Iberville to be sold, as stated by plaintiffs in their petition.

He states further, that said steamers were captured by the military and naval forces of the United States on the waters of the Mississippi river, in the State of Louisiana, a State that had been declared, and was, at the time of the capture aforesaid, in insurrection against the United States of America and government thereof, in 1862: said boats being the property of persons residing in said insurrectionary States; that on the 21st December, 1865, said vessels were delivered to defendant Flanders, who was a special agent of the United States Treasury Department, and authorized by the laws of said United States to receive the same for the United States, as captured property under the various laws of Congress relating to that character of property; and that he now holds, and has ad-
16 vertised the sale of said boats, in his official capacity alone.

Defendant files herewith, as part hereof, the order of the military department of the United States above referred to, delivering said boats to him as treasury agent as aforesaid. The same is dated New Orleans, Dec. 21, 1865, and is signed by E. S. Allen, who was, at the time of signing and issuing the same, a lieut. col. in the service of the United States in the Quartermaster's department thereof, duly authorized thereto. Said order is herewith filed as part

hereof. Defendant further says, that he is still acting as treasury agent of the United States, and that said vessels are properly in his possession as such, but not otherwise.

Defendant further states that this court has no jurisdiction whatever of the matter and things alleged and set up in said peti-
17 tion, because the Congress of the United States of America did, by an act approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," vest and assign the jurisdiction of all the claims, complaints, matters, and things set *set* forth and alleged by plaintiffs in their petition, exclusively in the Court of Claims of the United States, and that the plaintiffs have no right to bring the same before this court.

Wherefore defendant Flanders tenders with this answer this, his plea, to the jurisdiction of this hon. court, and prays th
junction obtained herein by the petitioners be dissolved v
and petition dismissed with costs and for general relief.

(Signed) BENJ. F. FLAN

Sworn to and subscribed before me this 10th Jan'ry, 18
(Signed) F. B. VINOT, *D*

18 Doc't filed with answer January 11th, 1866.

OFFICE A. Q. M.,
New Orleans, La., December 21*s*

Hon. B. F. Flanders, treasury agent, New Orleans, La.:

SIR: I have the honor to inform you that the steamers L
and Iberville, which I have delivered to you this day, in a
with act of Congress approved July 13th, 1861, May 20th, 1862, and March 12th, 1863, were captured in the Mississippi river, in the State of Louisiana, in 1862.

Very respectfully, your obedient servant,

E. S. ALLEN,
Bre't Lieut. Col. and A. Q. M.

Rule taken by defendant B. F. Flanders to dismiss petition and injunction.

19 Circuit court of the United States, sixth circuit and eastern district of Louisiana, November term, A. D. 1863.

NEW ORLEANS, *Eleventh day of January*, 1866.

Court met pursuant to adjournment; present, the honorable Edw. H. Durell, district judge.

BAYOU SARA MAIL COMPANY
vs.
ANTHONY FERNANDEZ and BEN. F. FLANDERS. } No. 3,709.

On motion of Jno. K. Goodloe, U. S. attorney, representing Benj. F. Flanders herein, and on showing to the court that the said Flan-

preme Court of the United States of America, at the city of New Orleans, this 9th day of January, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

14 *Marshal's return.*

Received January 9th, 1866, and on the 10th day of same month and year served a copy of the within citation and plaintiff's petition annexed on Anthony Fernandez, the defendant named herein, personally, at his office, 37 Exchange Place, in this city.

New Orleans, January 10th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Answer and plea to the jurisdiction.—Filed January 11th, 1866.

BAYOU SARA MAIL COMPANY *vs.* ANTHONY FERNANDEZ & BENJAMIN F. FLANDERS. } Ans. and plea to jurisdiction.

To the honorable the circuit court of the United States for the 6th circuit and eastern district of Louisiana:

The defendant, Benjamin F. Flanders, herein represented by Jno. K. Goodloe, U. S. atto. for the eas. dis. of Louisiana, says that
15 it is true that he has ordered and advertised the steamers Laurel Hill and Iberville to be sold, as stated by plaintiffs in their petition.

He states further, that said steamers were captured by the military and naval forces of the United States on the waters of the Mississippi river, in the State of Louisiana, a State that had been declared, and was, at the time of the capture aforesaid, in insurrection against the United States of America and government thereof, in 1862: said boats being the property of persons residing in said insurrectionary States; that on the 21st December, 1865, said vessels were delivered to defendant Flanders, who was a special agent of the United States Treasury Department, and authorized by the laws of said United States to receive the same for the United States, as captured property under the various laws of Congress relating to that character of property; and that he now holds, and has ad-
16 vertised the sale of said boats, in his official capacity alone.

Defendant files herewith, as part hereof, the order of the military department of the United States above referred to, delivering said boats to him as treasury agent as aforesaid. The same is dated New Orleans, Dec. 21, 1865, and is signed by E. S. Allen, who was, at the time of signing and issuing the same, a lieut. col. in the service of the United States in the Quartermaster's department thereof, duly authorized thereto. Said order is herewith filed as part

hereof. Defendant further says, that he is still acting as treasury agent of the United States, and that said vessels are properly in his possession as such, but not otherwise.

Defendant further states that this court has no jurisdiction whatever of the matter and things alleged and set up in said peti-
17 tion, because the Congress of the United States of America did, by an act approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," vest and assign the jurisdiction of all the claims, complaints, matters, and things set *set* forth and alleged by plaintiffs in their petition, exclusively in the Court of Claims of the United States, and that the plaintiffs have no right to bring the same before this court.

Wherefore defendant Flanders tenders with this answer this, his plea, to the jurisdiction of this hon. court, and prays that the injunction obtained herein by the petitioners be dissolved with costs, and petition dismissed with costs and for general relief.

(Signed) BENJ. F. FLANDERS.

Sworn to and subscribed before me this 10th Jan'ry, 1866.

(Signed) F. B. VINOT, *D'y Clk.*

18 Doc't filed with answer January 11th, 1866.

OFFICE A. Q. M.,
New Orleans, La., December 21st, 1866.

Hon. B. F. Flanders, treasury agent, New Orleans, La.:

SIR: I have the honor to inform you that the steamers Laurel Hill and Iberville, which I have delivered to you this day, in accordance with act of Congress approved July 13th, 1861, May 20th, 1862, and March 12th, 1863, were captured in the Mississippi river, in the State of Louisiana, in 1862.

Very respectfully, your obedient servant,

E. S. ALLEN,
Bre't Lieut. Col. and A. Q. M.

Rule taken by defendant B. F. Flanders to dismiss petition and injunction.

19 Circuit court of the United States, sixth circuit and eastern district of Louisiana, November term, A. D. 1863.

NEW ORLEANS, *Eleventh day of January*, 1866.

Court met pursuant to adjournment; present, the honorable Edw. H. Durell, district judge.

BAYOU SARA MAIL COMPANY
vs.
ANTHONY FERNANDEZ and BEN. F. FLANDERS. } No. 3,709.

On motion of Jno. K. Goodloe, U. S. attorney, representing Benj. F. Flanders herein, and on showing to the court that the said Flan-

ders has filed a plea to the jurisdiction of the court in this cause, it is ordered that the plaintiffs herein show cause, on the 13th day of January, why their petition and injunction should not be dissolved and dismissed with costs.

20 *Marshal's return.*

Received January 12th, 1866, and same day, month, and year served a copy of the within rule and order on P. H. Morgan, esq., personally, he being attorney for the plaintiffs in the above-entitled suit.

New Orleans, January 12th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Hearing and submission of rule from minutes Jan. 13th, 1866.

BAYOU SARA MAIL COMPANY
vs.
ANTHONY FERNANDEZ & BENJ. F. FLANDERS. } No. 3,709.

The rule herein taken by the defendant on the 11th instant, came up for trial, John K. Goodoe, esq., U. S. att'y, representing Benjamin F. Flanders, plaintiff in rule; J. H. Morgan, esq., for de-
21 fendant in rule; when, after hearing pleadings and argument, the court took time to advise.

Motion and order to issue a new writ of injunction and sequestration.—From minutes of February 10th, 1866.

BAYOU SARA MAIL CO.
vs.
B. F. FLANDERS *et al.* } No. 3,709.

On motion of P. H. Morgan, of counsel for plaintiffs herein, and on suggesting to the court that the writ of injunction and sequestration herein issued has been returned by the marshal, who states therein that he was dispossessed by the defendant from the custody of the property herein at issue between the parties, it is now again ordered by the court that the marshal do take possession of, and keep
22 until further order of the court, the property in controversy between the parties of this suit, and, to this end, that a new writ of injunction and sequestration do issue herein.

Letters annexed to plaintiffs' motion.—And filed February 10th, 1866.

JANUARY 29TH, 1866, 2 o'clock p. m.

Hon'ble B. F. Flanders, spec'l ag't, &c.:

MY DEAR SIR: Immediately after you left me with verbal instructions to retake possession of the st. boats Laurel Hill and Iberville; desirous of complying with them, I called for the papers in the case, and perceived that having made a return to the court, a new order of

seizure on custody was lawfully required by the marshal before he could proceed as you desire, and I have very reluctantly to wait until upon any process which will follow a decision on the rule.

Very respectfully, your ob't ser't,

(Signed) A. BAUDOUIN, *Chief D'y.*

23 OFFICE SUPERVISING SPECIAL AGENT
TREASURY DEPARTMENT,
New Orleans, Feb. 7th, 1866.

Hon. E. H. Durell, judge U. S. dist. court:

SIR: When the steamboats Iberville and Laurel Hill were turned over to me, I requested the military commander to allow the guards to remain on the boats, appointed keepers, and instructed them not to allow anybody except the guards to go or remain on board at night from sunset to sunrise. When the injunction was issued a man went to the boats and said that he was sent there by the U. S. marshal as keeper of them, but showed no order of the marshal. The keeper told him that he could not remain without an order from me, and about sunset requested him to go ashore. The next day this
24 was reported to me. Thinking that the sending a keeper by the marshal was a mere matter of form, and that you would decide immediately on the application to dissolve the injunction, I gave the matter no further attention for several days, when I called on the deputy marshal, Baudouin, and requested him to send a keeper with a written order, and informed him that I had ordered and arranged for the guards and my keepers to leave him in possession. Mr. Baudouin said that the return of the keeper had been filed, that he had been ejected by military force from the boats.

These are the facts, and I wish to state that no disrespect or contempt for the court was intended.

I think the explanation and disavowal are due to the court, and I hope they will be accepted as satisfactory by your honor.

Ob't serv't,

(Signed) BENJ. F. FLANDERS,
S. S. A. T. D.

25 *Alias sequestration.—Issued 10th February*, 1866.

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

N. O. AND BAYOU SARA MAIL CO.
vs.
BENJ. F. FLANDERS and ANTHONY FERNANDEZ. } No. 3,709.

UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

The President of the United States to the marshal of the United States for the eastern district of Louisiana, greeting:

You are hereby commanded, as you have heretofore been, to take into your possession according to law the steamboats Iberville and

Laurell Hill, and hold the same until further order of this honorable court. And what you may do in the premises, make due re-
26 turn thereof to our said court.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, the 10th day of February, A. D. 1866.

(Signed) CHAS. CLAIBORNE, *Clerk.* [SEAL.]
(Signed) By F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received February 13th, 1866, and in obedience to the within writ, I seized and took into my possession the steamboats Iberville and Laurell Hill, which are now held subject to the further order of court. Writ returned, executed this 13th February, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Alias injunction.—Issued 10th February, 1866.

27 Circuit court of the United States, sixth circuit court and eastern district of Louisiana.

THE UNITED STATES OF AMERICA:

THE N. O. & BAYOU SARA MAIL CO.
vs.
BENJ. F. FLANDERS and ANTHONY FERNANDEZ. } No. 3,709.

The President of the United States to Benjamin F. Flanders:

Whereas it has been represented to us, in our said circuit court, on the part of the N. O. & Bayou Sara Mail Co., by their motion exhibited this day against you, to be relieved touching and concerning certain matters and things therein contained. Now, therefore, in consideration of the premises, and the allegations in said motion continued, you, Benjamin F. Flanders, your agents, and attorneys, and each of you, are hereby commanded and strictly enjoined, as
28 you have heretofore been, under the penalty of law, that you absolutely refrain and desist from using, selling, or otherwise dispose of the steamboats Iberville and Laurell Hill until the further order of our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 10th day of February, A. D. 1866.

(Signed) CHS. CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received February 13th, 1866, and the same day, month, and year served a copy of the within writ on B. F. Flanders and Anthony

Fernandez, the defendants named herein, by leaving the same
29 in the hands of B. F. Flanders personally, at his office, corner of Crossman and Front Levee streets in this city.

New Orleans, February 13th, '66.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Order on rule.—From minutes of Feb. 19th, 1866.

THE N. O. BAYOU SARA MAIL CO.
vs.
BENJ. F. FLANDERS and ANTHONY FERNANDEZ. } No. 3,709.

Ordered that this cause be reinstated on the issue docket and that proof be furnished of the dates of the capture of the steamboats Laurell Hill and Iberville, sequestered in this case.

Motion and order on report and affidavit of marshal's keeper.—Entered and filed February 24th, 1866.

U. S. circuit court.

30 N. O. & B. S. MAIL CO.
vs.
ANTH. FERNANDEZ and B. F. FLANDERS. } 3,709.

On motion of Miles Taylor, esq., att'y for Cuthbert Bullitt, U. S. marshal, and on his showing to the court that a certain steamboat, part of the property involved in the above suit, is in imminent danger from a very heavy squall and rapid falling of the water of the Mississippi, and on suggesting to the court the absolute necessity of immediate action of the U. S. marshal for the safety of the property, it is therefore ordered, by the court, that the U. S. marshal do have permission to use such means, either by steam-tug or otherwise, as shall be necessary to place the property in a safe place.

To Cuthbert Bulilttt, U. S. marshal:

31 SIR: I beg leave to report the steamer Laurell Hill in a very dangerous situation, from the heavy wind and the water falling very fast, and the absolute necessity to employ a tug or two to remove her from the edge of the bank on which she now lies, and if not done forthwith the boat will probably be materially injured, if not lost.

Respectfully,
(Signed) C. F. HALLE,
Marshal's keeper.

U. S. circuit court.

N. ORLEANS & BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJ. F. FLANDERS. } 3,709.

C. F. Holle, the U. S. marshal's keeper of steamboat Laurell Hill, n the above-entitled suit, being duly sworn, doth depose and say

that the foregoing facts are true to the best of his knowledge and belief.

(Signed) C. F. HOLLE.

32 Sworn to and subscribed before me, this 24th February, 1866.

Clerk's office, U. S. circuit court, New Orleans, Feb. 24th, 1866.

(Signed) CHAS. CLAIBORNE.

Notice to take testimony.—Issued February 24th, 1866.

United States circuit court, eastern district of Louisiana.

THE N. O. & BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJAMIN F. FLANDERS. } No. 3,709.

To P. H. Morgan, esq.:

You are hereby notified that testimony will be taken in the above-entitled cause on Monday, the 26th day of February, 1866, at the clerk's office of this court, at 12 o'clock m., on behalf of defendants.

(Signed) F. B. VINOT, *D'y Cl'k.*

New Orleans, Feb'y 24th, 1866.

33 *Marshal's return.*

Received February 26th, 1866, and on the same day, month, and year served a copy of the within notice on P. H. Morgan, esq., the attorney named herein, personally.

New Orleans, February 26th, 1866.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Testimony for defendants.—Filed February 26th, 1866.

NEW ORLEANS AND BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJ. F. FLANDERS. } No. 3,709.

Present: P. H. Morgan, for pl'ffs, and Miller, assistant U. S. dist. att'y, for def ts.

Testimony taken before Chs. Claiborne, U. S. comm'er:

William Johnson, for the defendants, being duly sworn, deposes and says:

34 For the last 15 years I have lived at Bayou Plaquemines; I know the steamboat Laurell Hill; in 1862, in May, I believe about the month of May, she laid in Bayou Jacko; I brought her out of Bayou Jacko to the Mississippi as pilot; she laid in Bayou Jacko, at Mr. Michael Slaughter's plantation, six miles down the bayou. A crew came there from New Orleans and took possession of the boat; some of the persons who thus came on board were armed; they were United States troops under the command of Col.

Sturgis. He brought her down to New Orleans. This was, I think, in May, 1862.

Cross-examined:

All I know about the capture is that she was take possession of by armed men, at night; no resistance was made; there were on board, when she was taken possession of, only two engineers and a cook. She had been some week or two in Bayou Jacko when
35 she was taken possession of. I saw her arrive there; she came from New Orleans; the captain and crew left her there; only the two engineers and the cook staid on board.

Re-direct:

After she was captured, at one or two o'clock at night, I came on board of her, employed as pilot, and brought her out to the mouth of the bayou, at its junction with Mississippi river, and then delivered her to Col. Sturges. I was employed as pilot on board to get her out of the bayou, because the squad of men who came on board had not been able to get a pilot at Plaquemines, and it was necessary to have a person acquainted with the bayou to get her out; I was not on board when she was captured; I had been on board an hour or more before the capture, playing cards with the engineers; I went
36 home, I heard the steam blowing off an hour or more afterwards, I returned to the boat to know what was the matter, I then found the squad of men on board; I offered my services as pilot, which were accepted. After daylight, as Devil's Elbow, we were fired on by some men on shore; the engineers names were Pete and Jack; they left the boat as soon as the squad came on board; they were offered employment on board, that is to say, a free passage to New Orleans in payment of their assistance to take the boat to New Orleans; they refused.

(Signed) W. JOHNSON.

Sworn to and subscribed before me, this 26th day of February, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

H. B. Fortin, for defendants, being duly sworn, deposes and says: I am an engineer by profession, running on steamboats; I
37 know the Laurell Hill; I am one of the party that captured the Laurell Hill; she was captured in the early part of May, 1862, in a bayou called Bayou Jack or Jacko; I know nothing about that bayou; I never had been there before; I thought, at the time, that she was is Bayou Plaquemines. We started from New Orleans by order of Capt. Snow, the harbor master here; this was a short time after the fall of New Orleans. I was accompanied by several citizens of New Orleans; we went on the Diana, a government boat, and we landed at the mouth of the Bayou Plaquemines, at nine or ten o'clock at night; after we got there, we inquired about the Laurell Hill, and having ascertained where she laid, we proceeded to Bayou

Jacko and took possession of her; this was about 6 miles from the place where we landed; we *we* marched 6 miles through the woods
38 during the night; we found on board two engineers, one of them we found at work endeavoring to disable the boat by taking the throttle valve off of the doctor; I prevent him myself from doing so; I went to work by putting on the throttle valve and raised steam; the the other engineer, I was told by the parties on board, was endeavoring to destroy the boat to prevent the Yankees from getting her. I asked one of the engineers to remain on board and assist us in taking her to New Orleans; he refused. The engineer whom I asked to come down with us was not the one who was endeavoring to disable the boat by taking off the throttle valve. We were all citizens who took possession of the boat; we had no military with us; after we got steam up, we got Mr. Johnson (the first witness) to pilot us out of the bayou to the Mississippi; we stopped at
39 the mouth of the bayou a short time and then came down to New Orleans; after she came down she was placed in the quartermaster's department. I had charge of the squad. Capt. Thomas, a citizen, acted as captain on board of the boat; he came with me from New Orleans.

Cross-examined:

I saw the Laurel Hill in New Orleans; I was on board of her several times before I went up on this expedition; I claim salvage for capturing this boat; that is my interest in the matter; I have employed a lawyer, Mr. Levison, to present my claim against the government of the United States; I want to work in order to obtain salvage; I do not know whether I shall get anything if the boat is not condemned; whether condemned or not, I claim my salvage. I saw the Laurell Hill; I was on board of her in the fall or winter of
40 1861; I was here when the fleet came up; I did not see then the Laurell Hill; many boats, wharves, and cotton and sailing ships, rams also were burned on that day in New Orleans; no resistance was made; none could have been made when we captured the Laurell Hill; they were too few on board to resist; we were all citizens engaged in this expedition; I was the first man who jumped on board.

Re-direct:

The boat was within the confederate lines when she was captured.

Cross-examination resumed:

There were United States troops at that time at the mouth of Bayou Plaquemines, on board of transport.

(Signed) H. P. FORTIN.

Sworn to subscribed before me, this 26 day of February, 1866.

(Signed) CHAS. CLAIBORNE,
U. S. Com'ner.

Joshua Cardwell for defendants, duly sworn, deposes and says:

41 I left New Orleans with a squad of men to capture the Laurell Hill; Capt. Thomas had charge of the squad; we organized here in order to capture the boat, having understood that she laid in Bayou Plaquemines; we left here in the fore part of May, 1862. I endeavored to obtain the services of several pilots before leaving the city, but could not get any; we landed at the mouth of the Bayou Plaquemines at about ten o'clock at night; we went there on board of the Diana; she was in charge of the government officers; we went ashore there; Capt. Sturges had eight soldiers with him for his protection; he had charge of the Diana; three of those soldiers followed us as stragglers; as far as I could judge they were stragglers; they were all privates; when we ascertained where the Laurel Hill laid, we proceeded to her and found her in Bayou Jack; we took possession of the boat; we raised steam and brought her to the Mis-

42 sissippi river at daylight; we were fired on before we got to the mouth of Bayou Plaquemines; she was inside of the confederate lines when we captured her, 7 miles from any U. S. forces.

When we captured her, attempts were made by those on board to disable the boat; we demanded her in the name of the United States, and they delivered her to us.

Mr. Johnson piloted us out of the bayou.

We landed at the mouth of Bayou Plaquemines and were cheered by the soldiers there. Capt. Sturges came then on board of the Laurel Hill; we brought her down to New Orleans; she was turned over by Capt. Thomas to the quartermaster of the United States. I had seen the Laurel Hill before that time; the morning the fleet appeared in sight I saw her lying at the wharf; she left in great haste that day, towing the Iberville.

43 No resistance was made to our taking possession of the boat. I saw squads of men on the road, but were not interfered with.

We were fired at from the bushes when coming out with the boat; the fire came from small arms. Many boats were burnt when the fleet arrived here; a great many of the steamboats were burned on that day; I cannot say that they were all burnt.

If I had had a boat at that time in New Orleans, I would have kept her in the stream and endeavored to save her from burning, but would not have taken her away from the protection of the United States forces.

(Signed) JOSHUA CARDWELL.

Sworn to and subscribed before me this 26th day of February, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

44 *Testimony for plaintiff.—Filed March 15th, 1866.*

BAYOU SARA MAIL COMPANY
vs.
B. F. FLANDERS *et al.*

Testimony taken March 15th, 1866, before U. S. com'n'r C. Claiborne, in presence of the dist. att'y and P. H. Morgan.

Leo Bayhi sworn for pl'ffs, says:

In April and May, '62, I was in the employ of the N. O. and Plaquemines steamboat association.

This was a branch of the N. O. and Bayou Sarah Mail Company. The Empire Parish belonged to this branch.

When the city was captured, I was lying on the wharf of this city in the Empire Parish. The Laurel Hill and Iberville lay at the foot of Custom-house street at that time, that is to say, the Laurel Hill lay
45 there, and the Iberville at the point of Algiers. Everything was being destroyed in the city at that time, the fall of the city.

The shipping and boats lying at the wharf were being destroyed by the mob. The mob attempted to destroy every boat that remained at the wharf; don't know how many were destroyed. Several were destroyed to my knowledge.

I was hailed on going up the river to take a boat from the wharf, the Laurel Hill; Capt. Heno and Capt. Lanone hailed me. Capt. Lanone was the president of the N. O. and Bayou Sara Mail Co. Heno was the capt. of the Laurell Hill. I hailed back that I could not come in because the gunboat Jackson was on fire very near to the Laurell Hill. I was afraid my boat would catch fire in going in. The Laurell Hill was towed off by the Beauregard, which laid alongside of her, and was taken in the stream and brought alongside
46 of the Iberville, across at the point of Algiers. The Iberville was at that time laying there for repairs, having been run into sometime before by the Gen'l Quitman.

The Laurel Hill then towed the Iberville as far as Carrollton, and proceeded up Red river as far as Plaquemines, and thence into Bayou Jacko, about 2½ or 3 miles from Miss. river. There she was tied up. On 9 May I saw 3 or 4 men on her.

On the Empire Parish I went up to the parish of St. Charles, when I returned to the city of N. O., and left Capt. Lanone in charge, who took her, the Laurel Hill, up to the Bayou Jacquot.

I left N. O. on 7th May, 1862, on board the diving bell Southern; arrived at Plaquemines on the evening of the 8th; went on board the Empire Parish same night; took her out next morning, the 9th,
47 and left the Laurell Hill laying at the bank there.

Col. French, the provost marshal, granted me a permit to take the Empire Parish up to Red river for the purpose of getting provisions. I took the Empire Parish up to Red River accordingly, and brought her back to N. O.; upon my return I was not interfered with by the U. S. officers; made two trips with her to Bayou Sara and two to Fort Jackson.

She was taken then and pressed into the service by Ad'l Porter, for the purpose of towing the mortar boats to Vicksburg. Whilst she was in the U. S. service she was sold by the N. O. and Plaquemines Mail Company.

The parties who purchased the Empire Parish had possession of her a short time after.

This boat, Empire Parish, was destroyed by fire in 1864.

I was not prevented by any one from taking the boat out of Bayou Plaquemines.

48 The stage of the water was very high at that time—the Red river and other tributaries were very high. The Laurel Hill could easily have gone up Red river without going into Bayou Jacquot. Had she gone up Red river she would have gone into the entire jurisdiction of the confederates. If the object of the owners had been to remove the Laurel Hill out of the jurisdiction of the U. S. military, they would have sent her up Red river. The sole object I know that they had in view was to save the Laurel Hill from destruction by fire.

Capt. Lanone told me that if there was more business than for one boat he would send the Laurel Hill up.

Cross-examined:

I was engaged as capt. of the Empire Parish at the time I speak of. This was at the time the federal troops came up the river. The conflagration and riot extended only within the limits of the

49 city.

There was no trouble either above or below the city.

A boat would have been equally safe going down as above the city. In running down we would have been obliged to run before the fleet and exposed of being destroyed. Had we gone down ahead of the fleet they might have fired on us. It is 110 miles from here to Bayou Jacquot; it was the safest place for her to go there, being away from the river and hidden.

The country there is generally timbered a mile back the river. Capt. Heno took the Laurel Hill there; he stayed there awhile and came back to the city in the Empire Parish.

This was after the Laurel Hill had been taken. There were no confederates at that place to my knowledge, neither any federals; no troops there at all then.

The other trips I made on the Empire Parish were made

50 under military permits. Great many boats went up Red river at that time; I mean at the surrender of the city, and generally remained in the confed. lines after getting up there.

The Laurel Hill was taken when I was away.

Re-ex.:

There were 2 batteries along the shore below the city.

(Signed) L. BAYHI.

Sworn to and subscribed before me, this 15th March, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

Testimony for defendants.—Filed March 17th, 1866.

BAYOU SARA MAIL CO.
vs.
BEN. FLANDERS.

MARCH 17TH, 1866.

Present: P. H. Morgan for pl'ffs, dist. att'y for defts.

C. F. Holle, a witness for defendants, being duly sworn, deposes and says:

51 I reside in the city of New Orleans. The steamboat Iberville was captured by the U. S. forces on the left bank of the Mississippi, between Carrollton and Greenville, or *or* about the 28th of April, 1862; she had left the city of New Orleans, I think, about one week before she was captured; she had left the city with arms and stores for the confederate government, when she was injured by collision with the steamboat General Quitman. As soon as the news had reached the city that the federal fleet had passed the forts, men on the levee attempted to set the Laurel Hill on fire, and she was towed out to the middle of the stream, or about the middle, and came to anchor. The next day some parties took charge of her, and took her up the river; this was before the fleet arrived. She went alongside of the Iberville to take her in tow; she could not get her off,
52 being prevented by some parties whom I do not know; she dropped her between Carrollton and Greenville. The men I mentioned above who attempted to burn the Laurel Hill, were setting fire at that time to cotton, to ships, to boats, etc.; they burned that night several ships. The fleet was just abreast of Canal street as the Laurel Hill dropped the Iberville.

There were some soldiers among the persons who took away the Laurel Hill, they had on them the confederate uniform. The Iberville was captured by the naval forces before the arrival of General Butler.

Cross-examined:

I heard firing below the city before the fleet came in sight. If I had had a boat at that time, I would not have escaped with her, I would have left her tied to the wharf. I was on the levee the
53 greater part of the day on which the fleet arrived. I do not remember to have seen a steamboat burned that day. I saw plenty of fire on the levee, and saw cotton burning, ship burning. I do not remember to have seen steamboats on fire.

I saw the Iberville loading with arms and ammunition for the confederate authorities; I was intimate with some of the crew on board of her. The Iberville went up the river, I am positive. I did not see the collision. She had at that time ordinance and commissary stores on board.

Re-direct:

I do not know whether the Iberville was going up or down when the collision took place; I know she left the city at the time I stated

with ordinance and commissary stores on board. I heard of the collision and have no personal knowlege of it.

If I had been the owner of a boat, I would not have left the city with her, because I would have preferred to take my chance with the federal fleet rather than have gone with her in the confederacy, where I would have lost her. I saw barges loaded with
54 pine wood and other combustibles set on fire and floating down the river. They could have gone down the stream and met the federal fleet.

Cross-examination resumed:

If I had had to land a boat, I would keep her away from where firing was going on as much as possible.

Re-direct:

The Chalmette batteries are about eight miles below the city; there is a batterry opposite. The contest between the batteries and the fleet was short.

(Signed) C. H. HOLLE.

Sworn to and subscribed before me, this 17th day of March, 1866.
(Signed) CHS. CLAIBORNE, *U. S. Com'r.*

Order continuance of cause.—Extract from minutes March 23, 1866.

NEW ORLEANS & BAYOU SARA MAIL CO.
vs.
A. FERNANDEZ and BENJ. F. FLANDERS.

55 This cause was called up, and on motion of the U. S. dist. att'y, J. K. Goodloe, esq., ordered to be continued till Tuesday next, 27th instant, at 11 a. m., notice hereof to be given to pl'ffs' att'y.

Notice of trial.

Circuit court of the United States for the sixth judicial circuit and eastern dist. of Louisiana.

N. O. & BAYOU SARA MAIL CO.
vs.
A. FERNANDEZ and BENJ. F. FLANDERS. } No. 3,709.

You are hereby notified that this case is continued for trial for Tuesday, the 27th day of March, 1866, A. D., at 11 o'clock a. m.

By order of court.

Witness my hand and seal of the said court, at New Orleans this 23 day of March, A. D. 1866.

(Signed) F. B. VINOT, *Dy. Clerk.*

To P. H. MORGAN, esq.

56 *Marshal's return.*

Received March 24th, 1866, and same day, month, and year served a copy of within notice on P. H. Morgan, esq., the attorney named herein, personally, at his office, 184 Gravier street, in this city.

(Signed) M. EGAN, *Dy. U. S. Marshal.*

New Orleans, March 26th, 1866.

Notice to take testimony.—Issued March 22d, 1866.

United States circuit court, eastern district of Louisiana.

THE N. O. & BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJ. F. Flanders. } No. 3,709.

To P. H. Morgan, esq.

You are hereby notified that testimony will be taken in the
57 above-entitled cause on Friday, the 23 day of March, 1866, at the clerk's office of this court, at 5½ o'clock p. m., on behalf of libellants.

New Orleans, March 22d, 1866.

(Signed) F. B. VINOT, *Dy. Cl'k.*

Marshal's return.

Received March 23d, 1866, and same day, month, and year served a copy of the within notice on P. H. Morgan, esq., att'y, named herein, personally, at his office, 184 Gravier street, in this city.

New Orleans, March 22d, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Testimony for plaintiff's.—Filed March 23d, 1866.

N. O. AND BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJAMIN F. Flanders.

Testimony taken March 23d, 1866, before Chs. Claiborne, U. S. com'ner, in presence of pl'ffs' and def'ts' counsels:

58 Frank Terence, person of color, being sworn for pl'ffs, says:

I was running on boats in the spring of 1862. I was on the Iberville in spring '62. I was employed on board as steward. I don't recollect exactly at what time I went on board. When the city was taken I was on board of her. The Iberville was lying at Greenville when the fleet came up; when they first had news of the coming of the fleet, the Iberville was laying across the river. I was on board of her then. I saw boats and ships on fire on this side of the river;

from where I was I saw the Iberville on that day. Everything was set on fire, and the Laurel Hill being in danger of being burnt, got loose from the wharf, was crossed over, and took her on tow, and towed her up to Greenville; it was also ordered to set fire to everything on the side where the Iberville was laying. Had the
59 Iberville remained where she was she would have been destroyed; they came to set her on fire while laying at Greenville; the fleet came up there.

Nobody was on board but myself; she was left under my care.

On Sunday morning, after the arrival of the fleet, eight yawls from the Hartford, with sixty well-armed men, came on board of the Iberville; the officers asked where was the commander; I replied, I was commander; that nobody else but myself was on board. The officer commanding told me he had orders from Commodore Farragut to take possession of her. I told him it was all right.

The officers took charge of the boat and remained on board of her; orders were given to hoist the Union flag, which was done immediately. They remained on board from Sunday to Wednesday
60 morning; that morning they took a notion to go through the boat and examined her; and they came up stairs again in the cabin, and told me, my dear sir, your vessel is not in a running condition; they asked me why I did not told them that the boat was not in a running condition. I told them I thought when they took charge of her they saw that she was not in a running condition; they said, no, we just found it out.

Immediately the officers ordered the men to make signals to the Hartford; they hoisted 3 flags; the signal was answered; then they ordered to pull the Union flag down. The officers so said to me, you vessel is not in a running condition; and the men were all ordered back to the yawls that came from the Hartford. I still remained on board; that very night the confederates, in citizens dress, came on board to burn her. I told them I did not wish them to do so
61 while I was on board, because I was placed on her by her owner; that it was not confederate property, but the owner's private property; if they wished to burn her to do it when the owner would be on board, because I did not want to take the responsibility; then they left. They happened to be young creole gentlemen of the city; they knew me, and did nothing to the boat on my account. That same night, between 11 and 12 o'clock, another party came to burn her. I did not know them. I made such a fuss that they thought there were a dozen people on board, and they left. I then went to the man who kept a wood yard, where the Bayou Sara mail boats always took their wood, to give me assistance, because I was alone, and they wanted to burn the boat. He send me a man who who did not come on board, but stayed ashore close to the boat. He passed the night with me, and he went out and told me he
62 thought there was no danger. Two days after that there was another watchman sent on board to assist me, (that watchman was sent on board by Capt. Joe Vincent; he used to be in the employ of the boat before.)

Three weeks after that Gen'l Butler sent the steamboat Diana to take her from Greenville and bring her down here; four days after she was at the wharf; they sent carpenters on board to repair her; when she was in good order, we went up to the first expedition against Vicksburg with all the fleet; she was used as the despatch boat. I stayed on board of her during all the time of the bombardment. I left her when we came back from the expedition. She was then chartered up to private parties. She was chartered about one or two months, then was taken charge of again by the government. Up to the time
63 Gen'l Butler took possession of the boat, Capt. Lanone president of the Bayou Sara Mail Co., paid me my wages. When the officers from the fleet, who had taken possession of the boat, left her, they ordered the flag to be put down. From the time that she was abandoned by the officers of the fleet, no officers exercised any control over her. There was nobody on the boat between those times by myself. They turned over the boat over to me, and never came back. I know how it happened that the Iberville was out of order. She was coming down stream when she collided with the steamboat Gen'l Quitman, at 8½ at night, about 9 miles above the city. This is the cause why she was disabled. She was got off the dock 2 or 3 days before the fleet came up.

Cross-ex.:

The wheels were all knocked to pieces. Had it not been for the timber of the cylinder, she would have been sunk by the
64 Quitman. The fire extended all along the wharf on this side of the city.

There was no fire on the other side. I heard a confederate officer give the order to set every thing on fire on the other side of the river. The Iberville was close to some old shanties that had been set on fire. The fleet was about 10 miles below at that time. There were some vessels on fire above and below the city. One of the owners employed the Laurel Hill to tow the Iberville to Greenville. Boats were burning and floating on the river near her, and she was towed up to get rid of the fire. I don't know why the Iberville was towed up to Greenville. They had just finished the repairing of her, and she was not in running order. The Laurel Hill could not make headway with her. They did not try to tow her up higher the river. Had she been towed down the river, she would have been
65 burnt, because everything was on fire there. I don't know where the Laurell Hill went at that time. The fleet came up on Saturday, and Saturday morning the Iberville was towed. The same day the fleet came up.

The next morning men of the fleet were sent on board. This was about the 23d or 24th April, 1862. They took charge of her at that time. When they left her, the fleet was laying on the opposite side of the river. Capt. Lanone paid me my wages up to the time Gen'l Butler took possession of the boat.

Re-direct:

I don't believe the Laurel Hill could have towed her up with her; she was lying all on one side. Capt. Lanone told me to take good care of the boat; that they would have her repaired—run her, and he would make me a present for my taking good care of her.

(Signed) F. TERENCE.

Sworn to and subscribed before me, this 23d day of March,
66 1866.

(Signed) CHA'S CLAIBORNE,
U. S. Com'ner.

James Tucker, sworn for plaintiff, deposes and says:

I am an engineer by occupation. I have been in the employ of the Bayou Sara Mail Line Co. I was in their employ in April, 1862. I was on board the Iberville. I was on board when the U. S. fleet came up. She was laying at Hassam's dock. She was being repaired. The fleet came in the morning. I lived on the other side of the river. Went on board in the morning. The Iberville was made fast partly to the dock and partly ashore. I saw that the Iberville was in danger of being destroyed where she was laying. I came this side of the river to Capt. Lanone to see what he would do
with her. He made me the remark, I did not know what to
67 do. I told him the Laurel Hill was laying above us, and she could take her in tow, and put her out of danger. He then told me to go to the capt., and tell him to take her. We both started to the boat, and when we came there there was not steam enough to manage the boat. We got steam as soon as we could, and took her in tow. In the meantime, there was a floating battery alongside of the Laurell Hill on fire. The Laurel Hill was in danger, too. With the assistance of the st'boat Beauregard, we pulled her out from the landing. By that time we had steam enough to handle the boat. We went then across the river, and took the Iberville in tow, and towed her to Greenville, and made her fast to the bank, and then I came back to town. Everything was burning on this side of
river—ships, st'boats, and all. Had the Laurel Hill remained
68 where she was, she would have been burnt.

No attempt by the owners of these boats was made to take either of them away until I informed Capt. Lanone of their danger. Had I not informed Capt. Lanone of their danger, nothing would have been done, and very likely they would have been burnt. When I informed Capt. Lanone of their danger, the Laurel Hill was laying alongside of a battery that was on fire. I was on the Iberville when she was ran into by the Quitman; the Iberville was going down, the Quitman coming up.

Cross-ex.:

The Laurel Hill and Iberville were both owned by the same company. Capt. Lanone was the agt. of the Empire Parish. Empire Parish and Laurel Hill went both together. I cannot say that the

Iberville would have been run up the river if she had been in good order.

I considered her out of danger at Greenville. I cannot tell
69 why the Laurel Hill did not remain there. The capt. and some of the crew of the Laurel Hill came to the city with the intention of taking their families out of it; they wanted to go as far as the parish of Iberville. I don't know whether they took them out or not.

There was no fire on the other side of the river that I recollect, but boats on fire were floating down. I don't think she was safer on the other side while these boats were floating down. I considered her safe when she was in tow of the L. Hill, because she could tow her out of danger; a burning boat had drifted where the Iberville was laying and burnt. I don't remember whether it was exactly at the point or not. I remained in the city after that; some 3 or four boats that were not burnt remained here.

I know that she was taken possession of. Gen'l Butler sent me an order to repair her.

70 Re-direct:

It was some time in May or June that Gen'l Butler sent me an order to repair her. I went to work on the 11th of June. The Laurel Hill could have taken her to any point. The Laurel Hill is a very powerful boat. It was the intention of the owners to put the Iberville in a safe place, and as soon as she was there they left her there.

Re-cross-exa.:

Had the Laurel Hill towed the Iberville up the river that would have impeded her course to a certain extent, but she had plenty of power to take her up. The L. Hill could have escaped from the fleet with the Iberville had she wanted it. I never went on board the Iberville before Gen'l Butler sent me the order to repair her.

(Signed) JAMES TUCKER.

Sworn to and subscribed before, this 23 March, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

71 *Testimony for defendants.—Filed March 24th*, 1866.

N. O. AND BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and B. F. FLANDERS.

Testimony for def'ts, taken before U. S. com. March 24th, 1866, at 5½ p. m. Present, dist. attorney:

Wm. R. Nickerson, sworn for def'ts, says:

ıe Laurel Hill was captured in Bayou Jacquot on the 8th May, , I think. This bayou is situated in Bayou Plaquemines, parish

of Iberville. She was captured by Capt. Sturgess, U. S. army. On the night the fleet passed the forts the Laurel Hill attempted to tow away the Iberville from the port of New Orleans.

I was on the diving bell boat Southerner, and saw the Lau-
72 rel Hill towing the Iberville pass Bouligny, in the parish of Jefferson.

The towing away of the Iberville took place on the day the fleet arrived.

I am one of the parties that captured the Laurel Hill in Bayou Jacquot.

About Greenville the Laurel Hill dropped the Iberville.

The Laurel Hill and Iberville used to carry troops and stores for the confederates, and had been so engaged up to the fall of the city.

I saw troops and stores on board of them most every trip.

I was in the city from the time the rebellion commenced up to the time of its fall.

The federal forces had possession of camp Parapet, and the Iberville lay between that camp and the city.

(Signed) WM. R. NICKERSON.

Sworn to and subscribed before me, this 24 March, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

73 *Testimony for pl'ffs.—Filed March 26th*, 1866.

N. O. AND BAYOU SARA MAIL CO.
vs.
B. F. FLANDERS *et al.*

Testimony for pl'ffs taken before U. S. com. in presence of Mr. Morgan and dist. att'y:

J. Morgan Hall, sworn for pl'ffs, says:

General Butler took possession of the Iberville on 22d May, '62. Ad. Farragut had possession of her before that time.

I had an interview with the admiral on board his ship in Oct., '63, with reference to this boat. He told me that he had taken possession of her; but as she was not in a condition to render him any services, he had abandoned her to the owners. He did not say that he claimed her or the Laurel Hill as prize. He distinctly told me
74 he did not. The Iberville was not in running order when Gen'l Butler took her. She was disabled at that time and under orders from Gen'l Butler. She was repaired. I received an order from Gen'l Butler in Sept., '62, to pay the repairs forthwith, but I did not pay the bill.

(Dist. att'y object and calls for the production of the order.)

I don't know that the bill has been paid by the company.

Cross-ex.:

On the 22 May, '62, Gen'l Butler took possession of the Iberville. The fleet took possession of her on 3d or 4th May, '62. But I don't

know it personally. Heard so. I am a stockholder of the N. O. and Bayou Sara Mail Co. The U. S. had possession of the boat on 23 May, '62. I don't know personally that Gen'l Butler had possession of her on the 23 May, 1862. Saw the Iberville in tow of the
75 Laurel Hill, go up river the day of the arrival before the fleet arrived. It was on the morning of the same day that the fleet arrived. Don't know what day the fleet took possession of her. The Laurel Hill dropped the Iberville below Carrollton, because she was not able to tow her, as I suppose. Don't know why. The object of the Laurel Hill and Iberville in leaving was to escape destruction. Being asked why did they not go down the river as well as up, says they were ordered to go up the river by the president, Mr. Lanone. Being asked was Mr. Lanone a Union or confederate man at that time, says he was a Union man before the war. Whether he was so when the vessels went away, I can't say. Being asked whether Mr. Lanone was a friend of the confederacy at that time, says, I don't know. He did not remain within the lines of the federal army.
76 He had remained in New Orleans for some 4 months after the city fell. Mr. Lanone died, as I heard. in western Louisiana, this side of Shreveport, in 1864. The Iberville left here under the orders of Capt. Lanone. The Iberville—neither the Laurel Hill—was in the conf. service before the city fell. I know that they carried freight, but don't know that they did confederate service. I was not conversant with the kind of freight they carried. The Iberville was empty when she left N. O. in tow of the Laurel Hill, as far as I know. I was not on board the day she left, but the day previous. Don't know what she had on the day she left. As far as I know she had no freight. The Iberville carried no confederate freight at any time to my knowledge. Did not see the Iberville every time she
77 left port. I don't know, and can't say what freight the Iberville carried before the fall of the city. I can't say that she carried no confederate freight. The federals had not possession of the Iberville until she returned to New Orleans. Butler wanted us to repair her, and offered us a liberal charter for her. No price stated, but a liberal charter promised. Admiral Farragut told me he had taken possession of her. Federal vessels laid along the river all the time. Farragut told me he had taken possession of her, but as she wanted so much repairs, he had abandoned her to the owners. The Iberville was not in running order after the federals had taken her. Gen. Butler ordered her repairs, and she was run in the U. S. service. The Laurel Hill was taken possession of above Donaldsonville, in Bayou Jacquot, as I heard. Don't know personally
78 at what point the Laurel Hill and Iberville was captured. The Iberville was taken, I heard, at Carrollton, and brought down here.

(Signed) J. MORGAN HALL.

Sworn to and subscribed before me, this 26th March, 1866.

(Signed) CH'S CLAIBORNE, *U. S. Comm'r.*

Thos. Hasam, sworn for claimant, says:

I am a shipwright. In the spring, 1862, I lived at Algiers, opp. N. Orleans. I was here when the fleet came up. At that time the people were destroying my dock. I sent word to the owners of the Iberville, which boat laid at my dock at the time, to take her away, else the mob would destroy her. The mob was at that time trying to sink my dock. Next morning they came and took the Iber-
79 ville away. I had made efforts to prevent the destruction of the Iberville. The Iberville went away the same morning the fleet arrived. I had been engaged in repairing the Iberville. Was in the habit of going on her every day. She had no freight when she went away. The next time I saw her, after she had left, was some 15 days, when she was brought back to finish her repairs, not to my dock, but on this side of the river, as my dock was gone then. Mr. Anderson and my foreman finished her repairs. I never got paid for her repairs. She was repaired, that is to say, the finishing repairs were ordered by Gen'l Butler, and have never been paid for. My partner demanded the payment of the repairs from Gen'l Butler. My partner, Mr. Anderson, had received an order from Gen'l Butler for the payment of the repairs on Mr. J. M. Hall.

(Dist. att'y objects and requires the production of the order.)

80 I have seen the order. I know the Laurel Hill—a strong, fine boat, was capable to take the Iberville anywheres. Had the Iberville laid there (at Algiers) eight hours longer she would have been burnt up.

Cross-ex.:

There were 2 boats burned up by the mob the same night on that side of the river, (Algiers.) The mob could have burnt the Iberville that night if they had chosen to do so. Don't know the names of the boats burnt. The Laurel Hill towing the Iberville would have, of course, impeded her speed. The Iberville could not have assisted in the escape in the broken condition she was. Made no particular examination of the Iberville's hull, but will positively state that she was empty when she left. Don't think there
81 was any freight of any description on her when she left. Don't know where or why the Laurel Hill dropped the Iberville. Don't know that she was or not engaged in carrying conf. freight when she was towed away. I don't think it would have been safer for the Iberville to go down stream. Don't know that she would have escaped the burners as well in going down as up river. The federals were coming up; there were none above the city. The Iberville left 8 or 9 hours before the federal fleet arrived; a good many boats left the city at the same time for up river; knew of none going down. The federal fleet burnt no vessels after they got here. I have no personal knowledge why the vessels left New Orleans up river, rather than down river. Only one supposition that they left for up river to escape destruction. Can't make any supposi-
82 tion that they went to escape the federals.

Cross-ex.:

Had I been the owner of the Iberville, and desired to preserve her from destruction, I would have sent her up river and not down, because there were 2 federal fleets and 3 confederate forts below and none above.

(Signed) THOS. HASAM.

Sworn to and subscribed before me, this 26th March, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

J. S. Simond, sworn for pl'ffs, says: I am a hardware and ship-chandler; was in N. Orleans in spring, '62; know the Laurel Hill well; I saw her in N. O. in May, 1862—about 13th May, 1862, when she came down the river. The Diana had been sent after her about the 9th, to bring her down; some small repairs were made when she came down. The Laurel Hill is a very powerful and fast boat;
83 knew the Iberville very well. The Laurel Hill is able to tow 4 boats like the Iberville up stream, and make 5 miles an hour. When the fleet arrived, the Iberville had been lying at Hassam's dock. I saw the Laurel Hill tow up the Iberville at about 7 o'clock in the morning of the day the fleet arrived. I think the Laurel Hill could have towed up the Iberville faster than the fleet came up. The condition of affairs at that time were such, that parties were burning boats, cotton, and sugar everywhere on the levee. Had the Laurel Hill remained at the wharf at that time she would undoubtedly have been burnt.

Cross-ex.:

The Iberville was towed away from the Algiers' side, and is
84 nearly as large as the Laurel Hill, but not so powerful. The federal fleet came up slowly. The Hardford came up at the rate of about 8 knots an hour; the Laurel Hill is able to make 15 miles an hour, and can beat most any boat. The Hartford's speed is about 8 knots an hour; the Laurel Hill can make 6 or 8 knots an hour with the Iberville in tow. I have no personal knowledge that the Iberville and Laurel Hill were in confederate service. The Laurel Hill undoubtedly could have escaped faster down, than up the river. Don't recollect, but don't think that these boats carried any other but confederate flags at that time. Don't know the capt. of the Iberville. Capt. Heno, I think, commanded the Laurel
85 Hill. Don't know where the Laurel Hill dropped the Iberville.

(Signed) J. S. SIMOND.

Sworn to and subscribed before me, this 26th March, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

J. S. Relf, sworn for pl'ffs, says: I know when the Iberville was taken possession of by Gen'l Butler. It was on 22 May, 1862. She was laying up at Greenville then, and brought to New Orleans at 5

p. m. The Bayou Sara Mail Co. was in possession of her when General Butler took her. The Laurel Hill reached here about 12 m., about 13th May, 1862. Saw her when she came in; was told she was taken in Bayou Jacquot.

Cross-ex.:

I am interested in the Bayou Sara Mail Co.; own stock to the am't of $10,000. Greenville is in the parish of Jefferson.

86 Re-ex.:

The distance from Greenville to N. O. is 4½ miles.

(Signed) J. S. RELF.

Sworn to and subscribed before me, this 26th March, 1866.

(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

Order continuance.—From minutes March 27th, 1866.

THE N. O. & BAYOU SARA MAIL CO.
vs.
A. FERNANDEZ and BENJ. F. FLANDERS. } No. 3,709.

By consent the trial of this cause is postponed till to-morrow at 11 a. m.

Order continuance.—From minutes March 28, '66.

87 THE NEW ORLEANS & BAYOU SARAH MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJ. F. FLANDERS. } No. 3,709.

By consent this cause is continued until to-morrow at 11 o'clock.

Submission of motion to set aside injunction.—From minutes March 29th, 1866.

THE N. O. BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ & BENJ. F. FLANDERS. } No. 3,709.

The motion made by the defendants on 11th January, 1866, to set aside the injunction came up in pursuance of the order of 13th February, 1866, requiring proof of the date of captures of the steamers Laurel Hill, and Iberville.

P. H. Morgan, esq., for plaintiffs; dist. att'y for defendants. When after hearing evidence and argument, the court took time to advise.

88 *Judgment.*

Circuit court of the United States, sixth circuit and eastern district of Louisiana, November term, 1865.

NEW ORLEANS, *Friday, April 6th*, 1866.

Court met pursuant to adjournment.

Present: Hon. E. H. Durell, dist. judge.

THE N. O. & BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ & BENJ. F. FLANDERS. } No. 3,709.

For reasons orally assigned, it is ordered, adjudged, and decreed that the injunction herein sued out be made perpetual so far as the steamer Iberville is concerned, and that said steamer be restored to the plaintiffs, but as regards the steamer Laurel Hill, considering that the court is without jurisdiction, it is further ordered
89 that the injunction and sequestration be set aside and dismissed with costs, and that said steamer be turned over to B. F. Flanders, agent of the treasury department, as captured property.

Judgment rendered April 6th, 1866.
Judgment signed April 11th, 1866.
(Signed) E. H. DURELL, *Judge.*

Rule by plaintiff for a suspensive appeal.—From minutes April 14th, 1866.

THE N. O. & BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ & BENJ. F. FLANDERS. } No. 3,709.

On motion of P. H. Morgan, of counsel for the plaintiffs herein, and on suggesting to the court that said plaintiffs are informed and believe that there is error in the judgment herein rendered on the 6th inst., which orders the surrender of the Laurel Hill to
90 the defendants, and that they are aggrieved thereby; it is ordered that the dist. att'y show cause on Monday, 16th inst., at 11 a. m., why a suspensive appeal should not be granted from said judgment, returnable to the Supreme Court of the United States at Washington city, on the first Monday of December, 1866, upon giving bond and security according to law.

Order rule made absolute.—From minutes April 16th, 1866.

N. O. BAYOU SARA MAIL CO.
vs.
A. FERNANDEZ & B. F. FLANDERS. } No. 3,709.

The rule taken by plaintiffs on 14th instant came up for trial.
P. H. Morgan, esq., for plaintiffs in rule; dist. att'y on be-
91 half of defendants in rule. When, after hearing counsel, ordered that the rule be made absolute and that a suspensive appeal be allowed the plaintiffs from the judgment herein rendered on the 6th instant, so far as it orders the surrender of the steamer Laurel Hill to the defendants, returnable to the Supreme Court of the United States on the first Monday of December next, upon their giving bond and security according to law.

Order for fixing amount of appeal bond.—From minutes April 20th, 1866.

N. O. & BAYOU SARA MAIL CO.
vs.
A. FERNANDEZ & B. F. FLANDERS. } No. 3,709.

On motion of P. H. Morgan, esq., att'y for plaintiffs, and on suggesting that the order granted by the court on 16th inst.,
92 allowing them a suspensive appeal herein, does not fix the amount of the bond to be furnished, ordered that an appraisement of the steamer Laurel Hill be made by H. G. Heartt and R. P. Robertson, and that said plaintiffs give bond and security in a sum exceeding by one half the appraised value thereof.

Notice to appraisers.

United States circuit court, eastern district of Louisiana.

THE N. O. & BAYOU SARA MAIL CO.
vs.
B. F. FLANDERS & ANTHONY FERNANDEZ. } No. 3,709.

To Heartt and Robertson:

Take notice that you have been this day appointed appraisers for the purpose of ascertaining the value of the property
93 libelled in this case, and you are to file the report of your appraisement within the shortest possible delay.

By order of the court.

New Orleans, April 20th, 1866.

(Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received April 20th, 1866, and forthwith served a copy of the within notice on Heartt and Robertson at the office of R. L. Robertson, in the hands of R. L. Robertson, jr.

N. Orleans, April 20th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Appraisers' report.—Filed April 20th, 1866.

Appraisers' report.

THE N. O. AND BAYOU SARA MAIL CO.
vs.
ANTHONY FERNANDEZ and BENJ. F. Flanders. } No. 3,709.

94 To the honorable circuit court for the eastern district of Louisiana.

We, the undersigned, appraisers to this honorable court, duly appointed and sworn, have the honor to report that on the twentieth

day of April, 1866, we proceeded on board of the str. Laurel Hill for the purpose of ascertaining her value; and after a careful and thorough examination find that she is about seven years old; built in Jeffersonville, Ind., 1859. Her length is feet inches; breadth of beam feet inches; depth of hold feet inches, or 461 tons burden, old measurement; side-wheel steamer, five boilers, two engines and doctors, transom, stern round, knucke foot hoaks fore and aft, single timbers 14 m.; centries tin, clamps on a side all bottled, double kelson, and straight plank, bulk head from end to end, built in Jefferson, Indiana, 1859, ton-
95 nage 461, old measurement; hull requires to be docked and repaired; no furniture of any value except dining tables, all require to be put in good order or new; guards all want overhauling, also huricane deck, and we vaiue her at six thousand dollars.

(Signed) H. G. HEARTT,
RICH'D L. ROBERTSON,
U. S. Prize Appraisers, New Orleans.

Appraisers' bill.—Filed April 20th, 1866.

UNITED STATES COMMISSIONER'S OFFICE,
Appraisers' Department.

In the matter of the N. O. and Bayou Sara Mail Co. *vs* Benj. F. Flanders and Anthony Fernandez, No. 3,709, to appraisers' office, Dr.

96 For appraisement steamer Laurel Hill, $6,000, at 1 per cent., $60.

Appeal bond—Filed April 20th, 1866.

United States of America, eastern district of Louisiana.

Circuit court of the United States, sixth circuit, eastern dist. of Louisiana.

Appeal bond.

THE N. O. AND BAYOU SARA MAIL CO.
vs.
B. F. FLANDERS and ANTHONY FERNANDEZ. } No. 3,709.

Know all men by these presents, that we, J. G. Landry, pres't of the N. O. and Bayou Sara Mail Co., as principal, and J. Morgan Hall as surety, are held and firmly bound unto B. F. Flanders *et al.*, defendants in this case, in the sum of nine thousand dollars, to be paid to the said Flanders *et al.*, for the payment of which, well and
97 truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans, the 20th April, 1866.

Whereas the above-named N. O. and Bayou Sara Mail Co. has appealed to the next term of the Supreme Court of the United States, to be holden at Washington on 1st Monday of Dec., 1866, from a final judgment of the circuit of the United States for said district, rendered against them on the 6th and signed on the 11th April, 1866, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him if he fails to make his appeal good, then this obligation to be void, otherwise the same shall be and remain in full force and effect.

98 (Signed) J. L. LANDRY,
Pres't N. O. & Bayou Sara Mail Co.
(Signed) J. MORGAN HALL.

Signed, sealed, and delivered in presence of—
(Signed) F. B. VINOT.

Order approving surety on appeal bond.—From minutes 21st April, 1866.

THE N. O. BAYOU SARA MAIL CO.
vs.
A. FERNANDEZ and B. F. FLANDERS. } No. 3,709.

John Morgan Hall, the surety on the appeal bond, was this day examined in open court and was accepted, after giving satisfactory proof of his solvency.

99 United States of America, circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 98 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the New Orleans & Bayou Sara Mail Company *vs.* Anthony Fernandez and B. F. Flanders, No. 3,709 of the docket, so far as the same now remain of record or on in file said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 6th day of July, A. D. 1866.

[SEAL.] CHS. CLAIBORNE, *Clerk.*

5-cent revenue stamp.

I, E. H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of

said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestation as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 6th day of July, A. D. 1866.

E. H. DURELL, *Judge.*

5-cent revenue stamp.

100 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Benjamin F. Flanders, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a motion and order for a suspensive appeal, filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the New Orleans & Bayou Sara Mail Company are plaintiffs and appellants, and you and Anthony Fernandez are defendants, to show cause, if any there be, why the judgment rendered against the said appellants, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this 21st day of April, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

Marshal's return.

Received April 21st, 1866, and same day, month, and year served a copy of the within citation of appeal on Benj'n F. Flanders, the defendant named herein, personally, at his office, corner of Levee and Crossman streets in this city.

G. HOLLANDER,
D'y U. S. Marshal.

New Orleans, April 23d, 1866.

101 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Anthony Fernandez, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a motion and order for a suspensive appeal, filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the New Orleans & Bayou Sara

Mail Company are plaintiffs and appellants, and you and Benjamin F. Flanders are defendants, to show cause, if any there be, why the judgment rendered against the said appellants, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this day of April, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge*.

Marshal's return.

Received April 21st, 1866, and same day, month, and year served a copy of the within citation of appeal on Anthony Fernandez personally, at his office, 37 Exchange place, in this city, he being the defendant named herein.

New Orleans, April 23d, 1866.

G. HOLLANDER,
D'y U. S. Marshal.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE NEW ORLEANS AND BAYOU SARA Mail Company, appellants,
vs.
ARTHUR THEVENOT AND BENJAMIN F. THEVENOT,
No. 54.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

STATEMENT AND ARGUMENT FOR APPELLEES.

E. R. HOAR,
Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

THE NEW ORLEANS AND BAYOU SARA Mail Company, appellants,
vs.
ANTHONY FERNANDEZ AND BENJAMIN F. Flanders.
No. 54.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Statement and argument for appellees.

This was a petition in the nature of a bill in equity, filed in the circuit court of the United States for the eastern district of Louisiana, by the New Orleans and Bayou Sara Mail Company, a Louisiana corporation, against Benjamin F. Flanders, a supervising special agent of the Treasury Department, and Anthony Fernandez, an auctioneer, praying, first, that the defendants be enjoined and prohibited from selling two steamboats, the Laurel Hill and the Iberville; second, that a writ of sequestration issue, directing the marshal to take said boats into his possession until further orders of the court; third, that the petitioners be declared the true and lawful owners of the said steamboats; and, fourth, that the boats be delivered over to the petitioners as their property.

The defendant Flanders filed an "answer and plea to the jurisdiction" (Rec., p. 6), setting up that the steamers were *captured property;* that as such they had

been delivered by the military authorities to him, as special agent of the treasury, under the acts of Congress in such cases provided; and that he held the boats, and had advertised their sale, in his official capacity. The defendant denied that the circuit court had any jurisdiction of the case made in the petition, on the ground that, by the act of March 12, 1863, the captured and abandoned property act, the entire jurisdiction of that case was vested in the Court of Claims. (Rec., p. 7.) He, therefore, prayed that the petition be dismissed.

Upon this, a rule to show cause why petition should not be dismissed was, on January 11, 1866, granted by the court. (Rec., pp. 7, 8.)

On February 19, 1866, the court ordered that proof be furnished of the dates of the capture of the boats. (Rec., p. 11.)

Thereupon, testimony for both parties seems to have been taken, showing, as we apprehend, that the Iberville was captured on May 22, 1862, and the Laurel Hill on the 8th of May, 1862.

On March 28, 1866, the rule to show cause, of January 11, came on for hearing, when the court entered a judgment to this effect: first, that the steamer Iberville be restored to the plaintiffs; and, second, that, as regards the steamer Laurel Hill, "considering that the court is without jurisdiction," it was ordered, that the injunction be set aside and that the steamer be turned over by the marshal to Mr. Flanders, as captured property. (Rec., p. 30.)

As this judgment was rendered "for reasons orally assigned," we are not informed of the grounds of this discrimination between the cases of the two vessels, or of the ground on which the court supposed it had any jurisdiction whatever of the suit.

From this judgment, in respect to the Laurel Hill, the plaintiffs have taken the present appeal. Of course, as the other vessel was restored to them by the judgment of the court, they had no ground of complaint against the decree in respect to her. (Rec., p. 30.)

It is plain, we think, that the circuit court for the eastern district of Louisiana had no jurisdiction whatever of the case set forth in the petition, and on these grounds:

I.

The petition does not show that the case is within the jurisdiction of the circuit court.

The act of September 24, 1789, section 11, defines the general jurisdiction of that court, as "of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or the suit is between a citizen of the State where the suit is brought and a citizen of another State." (1 Stat., 78.)

It is familiar doctrine that, in order to maintain a suit in the circuit court, the jurisdiction must appear on the record.

Sullivan *vs.* Fulton Steamboat Company, 6 Wheaton, 450.)

An omission to aver the citizenship of the parties, or other facts necessary to give jurisdiction, is a fatal defect on error, although no question of jurisdiction was made in the court below.

Piquignot *vs.* Penn. R. R. Co., 16 H., 104.

For aught that appears on the record, the parties were all citizens of the State of Louisiana.

We are not aware of any act of Congress by which the circuit court could entertain jurisdiction of the case in virtue of the *subject-matter*.

It cannot be considered, we think, a case "arising under the revenue laws of the United States," within the sense and meaning of the act of March 2, 1833.

II.

The circuit court could not entertain jurisdiction of the cause as a case in *admiralty*.

It has been decided that the circuit court possesses no original jurisdiction in admiralty.

Governor of Georgia *vs.* Madrazo, 1 Pet., 110.

The Hollen, 1 Mason C. C., 431.

The notion of admiralty jurisdiction would seem to have been in the mind of the counsel who brought the suit, from the averment in the petition that the "boats are now within the admiralty jurisdiction of this honorable court." (Rec. p., 1.)

III.

The case was plainly not one for the interposition of a court of equity by injunction.

This court has recently said: "The absence of a plain and adequate remedy at law affords the only test of equity jurisdiction, and the application of this principle to a particular case, must depend altogether upon the character of the case as disclosed in the pleadings.

Watson *vs.* Sutherland, 5 Wall., 79.

It needs no argument to prove that there was a plain and adequate remedy at law for any injury which the plaintiffs might suffer by the seizure and sale of their vessel; and that there was no occasion whatever for the interference of a court of equity.

IV.

No injunction could lie against the defendant Flanders, as a public officer, acting in the line of the duty and authority conferred upon him by the captured property acts.

Frewin *vs.* Lewis, 4 Mylne and Craig, 255.

Adams's Equity, 212.

V.

The point taken in the plea to the jurisdiction filed by the defendant Flanders, was well taken; and for the

reason set forth in that plea, to wit, the exclusive jurisdiction of the Court of Claims over this case, the injunction was properly dissolved; and the property released from the seizure of the marshal.

We understand that the action of this court in the case of Elgee *vs.* Lovell, decided by a divided court, December term, 1867, to have been practically an affirmance of the doctrine of the exclusive jurisdiction of the Court of Claims in this class of cases.

VI.

The court below, it would seem, endeavored to determine the validity of the original capture of the vessels. We understand it to have held in effect, that a vessel captured on the 8th of May, 1862, was rightfully captured; while one captured on May 22, 1862, was wrongfully captured by the military.

Whether the court was right in taking cognizance of that question or not, the conclusion in the first case was clearly right, under the decision of this court in the case of the Venice. (2 Wallace, 273.)

The court below took jurisdiction of the petition, and dissolved the injunction upon the merits.

For the reasons set forth under our first and second points, the court should have dismissed the petition for want of jurisdiction.

It would seem, therefore, to be proper for this court to reverse the judgment, and remand the case with directions to enter a judgment dismissing the case for want of jurisdiction.

Barney *vs.* Baltimore, 6 Wall., 289.

If this is not done, the judgment must be affirmed.

E. R. HOAR,
Attorney General.